

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

RCRev..No. 358 of 2006()

**(RCP NO.85/2000 OF RENT CONTROL COURT, THRISSUR.
RCA NO.90/2002 OF RENT CONTROL APPELLATE AUTHORITY,
THRISSUR.)**

REVISION PETITIONER/APPELLANT/RESPONDENT:

**RAJAN, AGED 45 YEARS,
S/O. AKATHEPARAMBIL RAGHAVAN, PERUMPILLISSERY,
CHERUCHANAM DESOM, CHERPPU VILLAGE, TRICHUR TALUK,
TRICHUR DISTRICT.**

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS: PETITIONER:

**SAJEEV, AGED 35 YEARS,
ADVOCATE, S/O. LATE THARAYIL MUTTICHOOKKARAN GEORGE,
PERUMBILLISSERY DESOM, CHOVOOR VILLAGE,
TRICHUR TALUK, TRICHUR DISTRICT.**

BY ADV. SRI.SAJEEV GEORGE(PARTY IN PERSON)

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 05/03/2007, THE COURT ON 26/03/2007 PASSED THE
FOLLOWING:**

P.R.Raman & Antony Dominic, JJ.
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R.C.R.No.358 of 2006
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Dated this the 27th day of March, 2007.

ORDER

Antony Dominic,J.

Tenant in R.C.P.No.85 of 2000 on the file of the Rent Control Court, Thrissur is the revision petitioner. Respondent herein, being the landlord of the tenanted premises, filed the petition invoking the grounds under Sections 11(2), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act') seeking eviction of the tenant. The Rent Control Court by its order dated 29.8.2002, ordered his eviction under Sections 11(2) and 11(3) of the Act and declined to accept the ground urged under Section 11(4)(v) of the Act. Aggrieved by the order of eviction of the Rent Control Court, the tenant filed R.C.A. No.99 of 2002 before the Rent Control Appellate Authority, Thrissur, which was also dismissed by its order dated 3.6.2006. Thus, it is against the concurrent findings rendered by the Rent Control Court and the Rent Control Appellate Authority that the tenant has filed this revision petition.

2. In support of the ground under Section 11(2)(b) of the Act,

the landlord had pleaded that the building in question was let out to the respondent in 1983 for the purpose of starting a parallel college and that the monthly rent fixed was Rs.135/-. It was also pleaded that the tenant had kept the rent in arrears for the period from 6.10.1999. On the other hand, the case of the tenant was that the arrears of rent was paid in R.C.P.No.3 of 1994, the previous proceedings between the parties, and that the rent for the subsequent period was sent by him by Money Order. According to the tenant, who was also examined as RW1, it was because the landlord declined to accept the rent that he could not make payment.

3. Examining this issue, the Rent Control Court adverted to the fact that Ext.A5 agreement between the parties made specific provisions regarding the payment of rent. Thereafter, the Rent Control Court entered a positive finding that payment was not made in terms of the provisions of the agreement between the parties, rendering the tenant liable for payment of interest in terms of the provisions of the Rent Control Act. On this reasoning, the Rent Control Court found that the payments stated to have been sent by the tenant were inadequate as it did not include interest and therefore, the landlord cannot be faulted for having not accepted the payment. On this basis, the Rent Control Court found that there was arrears of rent entitling the

landlord to get an order of eviction of the tenant under Section 11(2) (b) of the Act.

4. In the Rent Control Appeal filed by the tenant, the specific point as to whether the Rent Control Court was correct in allowing the petition under Section 11(2)(b) of the Act, was framed by the Appellate Authority. This point has been examined in detail. The Appellate Authority referred to Ext.A5, the rent chit executed by the tenant and found that the agreement itself provided that in the case of default of the tenant to pay rent at the rate of Rs.135/- per month, the tenant is liable to pay 12% interest for the defaulted amount. It was found that admittedly, even according to the tenant, he did not have a case that when rent was sent by Money Order, such payment included interest that accrued on the arrears. On this basis, the Rent Control Appellate Authority also confirmed the finding of the Rent Control Court under Section 11(2)(b) of the Act.

5. On an anxious consideration of the findings of both the Rent Control Court and the Rent Control Appellate Authority, we do not find any reason to interfere with such a finding of fact. Even during the course of the argument, it could not be demonstrated how this finding was erroneous in any manner. If the agreement between the parties provided for the consequence for defaulted payments, the tenant

cannot wriggle out of such contractual terms and is bound by such agreement. Admittedly, the amount that was despatched by the tenant did not include any amount towards interest that had accrued. If that be so, the landlord was justified in not accepting such part payment. This attracted the ground under Section 11(2)(b) of the Act and therefore, the finding of the Rent Control Court as affirmed by the Rent Control Appellate Authority does not warrant any interference.

6. The other ground that was urged by the landlord is under Section 11(3) of the Act, and this has been examined by the Rent Control Court under point No.2. It was urged by the landlord that on account of the petition schedule building, occupied by the tenant, the passage of air and light to his residential building is obstructed. He also pleaded that on the back side of the petition schedule property, he has a plot of land having an extent of 1.5 acres, where he wanted to set up a metal crusher unit. He had pleaded that there was no suitable way to the aforesaid plot of land, as a result of which, he was not even in a position to take usufructs from the land. PW1 has deposed that the pathway which was passing through the southern side of his residential building was only of 2 feet width and was not suitable for the the said purpose in as much as there was no motorable road to the 1.5 acres of his land.

7. On the other hand, the case set up by the tenant was that there is no obstruction to the free flow of air and light to the residential building of the landlord and that there is a motorable road to the plot owned by the landlord, in addition to the pathway on the southern side of the residential building of the landlord, having a width of 3 feet. Answering to the contention of the landlord that he is a permanent employee in Government service, the tenant had contended that he was only a temporary worker liable to be retrenched as and when regular hands are appointed. According to him, his main source of livelihood was the income derived from the business conducted in the petition scheduled building and he also pleaded that there is no other suitable building available in the locality. The tenant also pleaded that his monthly income from his employment was below Rs.5,000/- and that the landlord was earning a monthly income of more than Rs.10,000/- towards rent itself. Curiously enough, to a specific question as to whether he was depending upon the Government employment as his main source of livelihood, the evasive answer of the tenant was that he will lose his job when P.S.C. hands join duty.

8. The Rent Control Court also made reference to the evidence adduced by the landlord that he has already got experience in crusher metal business and that the Kerala Financial Corporation had promised

him financial assistance for setting up the unit. He also asserted in the witness box that if he gets vacant possession of the petition scheduled property, he wants to discontinue his enrolment as an Advocate. On examining the available evidence, the Rent Control Court entered a positive finding that the need alleged by the landlord is bonafide and that he had no other suitable building for the purpose of starting the metal crusher unit.

9. In so far as the entitlement of the tenant to the benefit of the Second Proviso to Section 11(3) of the Act, the Rent Control Court found that there was no satisfactory evidence to show that the tenant's main source of livelihood was the income derived from the business conducted in the petition scheduled property. Regarding the availability of suitable building in the locality, the Rent Control Court entered a finding that there was also dearth of reliable evidence to disprove the contention raised by the landlord. According to the Rent Control Court, the tenant had not made any proper enquiry regarding availability of suitable buildings in the locality. It was on this basis that the Rent Control Court found that the landlord's need was a bonafide one and allowed his prayer for eviction of the tenant under Section 11(3) of the Act.

10. In the appeal filed by the tenant, this issue has been dealt

with by the Rent Control Appellate Authority under the point as to whether the finding of the Rent Control Court that the landlord was entitled to eviction under Section 11(3) of the Act was sustainable. In addition to the evidence that was available in the rent control proceedings, we note that at the appellate stage, an Advocate Commissioner was appointed, who had filed a report which has been marked as Ext.C1. Before the Rent Control Appellate Court, it was contended by the tenant that even if the petition schedule building is demolished, lorries cannot be taken to the property behind the petition schedule property on account of the existence of a well and a transformer on the western side of the petition scheduled building. It was contended that there is already another motorable way leading to 1.5 acres of land, where the landlord intended to set up the metal crusher unit and that the landlord had not obtained any licence or other permission which is required for setting up the unit. Yet another submission was that there was previous proceedings between the parties and on account of which, the subsequent proceeding is hit by the principles of res judicata.

1. 11. The Rent Control Appellate Authority examined the requirement of the landlord under Section 11(3) of the Act in the light of three separate grounds urged by him. In so far as the

contention of the landlord that there was obstruction to light and air, the Rent Control Appellate Authority made reference to Ext.C1 report submitted by the Commissioner, where it was reported that all the windows of his house where the landlord lives with his family remain closed and there was obstruction to light and air. In so far as the contention of the tenant regarding the existence of a motorable way leading to the property in which the landlord proposed to set up the metal crusher unit, again the Rent Control Appellate Authority, making reference to Ext.C1 report where the Commissioner had reported that the said motorable way was blocked by the landlord's brother and that even the gate leading to the property was blocked by him. In so far as the plea on the ground of res judicata in view of the previous proceedings between the parties, the Appellate Authority entered a finding that there was no such plea raised by the tenant in the counter statement filed before the Rent Control Court. In addition to this, after examining in detail the requirement of having a motorable way leading to his property situated behind the plaint scheduled property, the Rent Control Appellate Authority found in paragraph 31 of its judgment said that the need urged by the landlord for providing a motorable way to the aforesaid property appears to be a bonafide one. The

court has also dealt with the proposal of the landlord to start the metal crusher unit in his property and found that the tenant has not adduced any evidence as to whether the landlord has in his possession any other building or site suitable for the said purpose.

12. As regards the conditions to be satisfied by the landlord for setting up the unit, the Rent Control Appellate Authority has held that it was the duty of the authorities concerned to examine the matter and that it was not for the tenant to raise this contention. The Rent Control Appellate Authority was also satisfied with the financial capacity of the landlord. Further the Rent Control Appellate Authority has also examined as to whether the tenant was entitled to the benefit of the Second Proviso to Section 11(3) of the Act and held that the tenant has failed to establish that he was mainly depending for his livelihood on the income derived from the business conducted in the plaint scheduled building. Regarding the non-availability of suitable building in the locality, the Rent Control Appellant Authority has made reference to Ext.C1 report where it has been specifically stated that there was a vacant room in the first floor of Muttichookaran building situated adjacent to the petition scheduled building. It was also reported that there were vacant rooms in the building where a ration shop was situated. Further, the Commissioner also reported about the

existence of vacant rooms with shutters. It is on this reasoning that the Rent Control Appellate Authority has held that the tenant is not entitled to the benefit of the Second Proviso to Section 11(3) of the Act.

13. On an overall consideration of the evidence as discussed and it was in the light of the commission report submitted at the appellate stage that in paragraph 44 of the order of the Appellate Authority, it held that the Rent Control Court was justified in allowing eviction of the tenant under Section 11(3) of the Act and declined to interfere.

14. We have considered the orders of the Rent Control Court and the Rent Control Appellate Authority and in fact, we have made detailed reference to the material facts on which the Rent Control Court and the Rent Control Appellate Authority concluded in favour of the landlord under Section 11(3) of the Act and we are satisfied that the finding of the Rent Control Court as affirmed by the Rent Control Appellate Authority is consistent with the evidence available and there is absolutely no reason to interfere with such findings of fact, exercising our power of review. The counsel for the petitioner contended that the Appellate Authority has not entered a finding of its own on the bonafide need urged by the respondent. We have examined this contention and found that the Appellate Authority has

examined the evidence independently and has endorsed the finding of the Rent Control Court. In view of this, we are not ready to accept the contention that this is a case where there is no finding by the Appellate Authority.

We do not find any merit in this revision. Accordingly, the revision will stand dismissed.

P.R.Raman,
Judge.

Antony Dominic,
Judge.